

## **Chapter 158: CO<sub>2</sub> BUDGET TRADING PROGRAM AUCTION PROVISIONS**

**SUMMARY:** This regulation provides for the administration and implementation by the Department of CO<sub>2</sub> allowance auctions and programs to promote the purposes of the Consumer Benefit Account as provided by 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program. This regulation complements the provisions of the CO<sub>2</sub> Budget Trading Program, which was established by the Department to stabilize and then reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources.

- 1. Applicability.** This regulation applies to any person who participates in RGGI CO<sub>2</sub> allowance auctions.
- 2. Definitions.**
  - A. Applicant.** “Applicant” means a party submitting an application.
  - B. Ascending price, multiple round auction.** “Ascending price, multiple round auction” means a multiple-round auction starting with an opening price which increases each round by predetermined increments. In each round, bidders offer the quantity they are willing to purchase at the posted price. Rounds continue so long as demand exceeds the quantity offered for sale. At the completion of the final round, the Department or its agent may allocate allowances:
    - (1) at the final price to remaining bidders and withhold unsold allowances for a future auction;
    - (2) at the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances; or
    - (3) according to an alternative mechanism designed to effectuate the objectives of this Chapter.
  - C. Beneficial interest.** “Beneficial interest” means profit, benefit, or advantage resulting from the ownership of a CO<sub>2</sub> allowance.
  - D. Bidder.** “Bidder” means a party that has met the requirements of subsection 3(C) of this Chapter to participate in an auction.
  - E. CO<sub>2</sub> allowance auction.** “CO<sub>2</sub> allowance auction” means the sale of CO<sub>2</sub> allowances through competitive bidding.
  - F. CO<sub>2</sub> allowance auction website.** “CO<sub>2</sub> allowance auction website” means a website established by the Department or its agent that will contain information regarding the CO<sub>2</sub> Budget Trading Program and auctions to be conducted pursuant to this Chapter.
  - G. CO<sub>2</sub> budget source.** “CO<sub>2</sub> budget source” means a source that includes one or more CO<sub>2</sub> budget units.
  - H. CO<sub>2</sub> budget source compliance account or compliance account.** “CO<sub>2</sub> budget source compliance account” or “compliance account” means the account

established by the Department or its agent for a CO<sub>2</sub> budget source wherein CO<sub>2</sub> allowances are held and available for compliance purposes under 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program.

- I. CO<sub>2</sub> Budget Trading Program.** “CO<sub>2</sub> Budget Trading Program” means a multi-state CO<sub>2</sub> air pollution control and emissions reduction program established pursuant to this regulation and corresponding regulations in other states as a means of reducing emissions of CO<sub>2</sub> from CO<sub>2</sub> budget sources.
- J. CO<sub>2</sub> budget unit.** “CO<sub>2</sub> budget unit” means a fossil fuel-fired unit that serves a generator with a nameplate capacity equal to or greater than 25 MW electrical output.
- K. Consumer Benefit Account.** “Consumer Benefit Account” means a general account established by the Department or its agent from which CO<sub>2</sub> allowances will be sold or distributed in order to provide funds to encourage and foster the following: promotion of energy efficiency measures, direct mitigation of electricity ratepayer impacts attributable to the implementation of the CO<sub>2</sub> Budget Trading Program, promotion of renewable or non-carbon-emitting energy technologies, stimulation or reward of investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, promotion and reward for combined heat and power projects, and/or the administration of Maine’s component of the CO<sub>2</sub> Budget Trading Program.
- L. Control period.** “Control period” means a three-calendar-year time period, unless extended to four years upon occurrence of a stage two trigger event. The first control period is from January 1, 2009 to December 31, 2011, inclusive, provided if a stage two trigger event occurs during the first control period, then the first control period will be extended one-year to December 31, 2012, inclusive. Each subsequent sequential three-calendar-year period is a separate control period that is subject to one one-year extension upon occurrence of a stage two trigger event during the control period. In no event may a control period be longer than four calendar years.
- M. Department contact person.** “Department contact person” means an employee of the Department or its agent designated to communicate with the public regarding CO<sub>2</sub> allowance auctions.
- N. Energy and Carbon Savings Trust.** “Energy and Carbon Savings Trust” means the trust established by The Regional Greenhouse Gas Initiative Act of 2007, 35-A MRSA §10008(2) that is authorized to receive revenue resulting from the sale of CO<sub>2</sub> allowances, deposit those allowances in the Energy and Carbon Savings Trust Fund and expend that revenue in accordance with 35-A MRSA §10008.
- O. Energy and Carbon Savings Trust Fund.** “Energy and Carbon Savings Trust Fund” means the nonlapsing fund established by The Regional Greenhouse Gas Initiative Act of 2007, 35-A MRSA §10008(2) and administered by the Energy and Carbon Savings Trust to support the goals and implementation of the CO<sub>2</sub> Budget Trading Program, into which revenue resulting from the sale of CO<sub>2</sub> allowances shall be deposited.

- P. General account.** “General account” means a CO<sub>2</sub> allowance tracking system account, established under 06-096 CMR Chapter 156 Section 7, that is not a compliance account.
- Q. Market settling period.** “Market settling period” means the first fourteen months of any control period.
- R. Notice of CO<sub>2</sub> allowance auction.** “Notice of CO<sub>2</sub> allowance auction” means the notification prior to each CO<sub>2</sub> allowance auction that will inform potential bidders of the date, time and location of the auction.
- S. Participating state.** “Participating state” means a state that has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.
- T. Reserve price.** “Reserve price” means the minimum acceptable price for each CO<sub>2</sub> allowance in a given auction, to be determined by the Department or its agent. The Department or its agent will not be obligated to sell any CO<sub>2</sub> allowance unless the corresponding bid meets or exceeds the reserve price.
- U. Regional Greenhouse Gas Initiative or RGGI.** “Regional Greenhouse Gas Initiative” or “RGGI” means the ongoing cooperative effort by the states of Maine, New Hampshire, Vermont, Connecticut, New York, New Jersey, Massachusetts, Rhode Island, Maryland and Delaware and such others states as may in the future become a part of the program to design and implement, using each state’s individual sovereign authority, a regional CO<sub>2</sub> cap-and-trade program covering CO<sub>2</sub> emissions from CO<sub>2</sub> budget units in the signatory states.
- V. Stage two threshold price.** “Stage two threshold price” means the monetary amount, established as of the first day of each calendar year, derived annually from use of the following formula:
- $$S2TP(2005+n) = [ S2TP(2005+(n-1)) \times \{ \frac{CPI(2005+(n-1)) - CPI(2005 + (n-2))}{CPI(2005+(n-2)) + 0.02} \} ] + S2TP(2005+(n-1))$$
- where:
- “S2TP” is the stage two threshold price;
- “S2TP (2005)” is \$10; and
- “n” is the number of years since 2005.
- “CPI” means, for purposes of the CO<sub>2</sub> Budget Trading Program, the U.S. Department of Labor, Bureau of Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for all items on the latest reference base, or if such index is no longer published, such other index as the Department or its agent determines is appropriate. The CPI for any calendar year is the twelve-month average of the CPI published by the United States Department of Labor, at of the close of the twelve-month period ending on August thirty-first of the previous calendar year.
- W. Stage two trigger event.** “Stage two trigger event” means the occurrence of any twelve-month period that completely transpires following the market settling

period and is characterized by an average CO<sub>2</sub> allowance price that is equal to or greater than the stage two threshold price.

- X. Uniform-price, sealed-bid auction.** “Uniform-price, sealed-bid auction” means a single round sealed-bid auction in which bidders may submit multiple bids at different prices; the price paid by all awarded bidders with the highest bid for the available allowances is equal to the highest rejected bid.

### **3. CO<sub>2</sub> Allowance Auction Provisions**

#### **A. The Consumer Benefit Account**

- (1) The Department will establish and administer the Consumer Benefit Account in accordance with 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program, subsection 2(B).
- (2) CO<sub>2</sub> allowances allocated to the State will be held in the Consumer Benefit Account and made available for sale in CO<sub>2</sub> allowance auctions as described in this Chapter.
- (3) The proceeds from the auctions of Maine’s CO<sub>2</sub> allowances will be received by the Energy and Carbon Savings Trust and deposited into the Energy and Carbon Savings Trust Fund, in accordance with 35-A MRSA §10008.

#### **B. Implementation and administration of CO<sub>2</sub> Allowance Auctions**

- (1) The Department or its agent will conduct auctions to sell CO<sub>2</sub> allowances allocated into the Consumer Benefit Account, pursuant to this Chapter.
- (2) The Department will design, implement and administer CO<sub>2</sub> Allowance Auctions, or contract for these services, in accordance with the objectives identified in 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program, this Chapter and as provided by law.
- (3) The Department or its agent intends to conduct or participate in any of the following, or a combination thereof:
  - (a) a multi-state CO<sub>2</sub> allowance auction or auctions;
  - (b) an auction or auctions coordinated with one or more participating states; or
  - (c) a Maine state auction.
- (4) The Department or its agent intends to hold auctions at least annually; auctions may be held as often as practical and necessary to effectuate the objectives of the CO<sub>2</sub> Budget Trading Program, at the Department or its agent’s discretion.
- (5) Prior to the end of each control period, CO<sub>2</sub> allowances in a quantity equal to the number of CO<sub>2</sub> allowances allocated to the Consumer Benefit Account for such control period will be made available for sale. The Department or its agent may also make available for sale CO<sub>2</sub> allowances for future control periods.

- (6) Prior to any auction, the Department or its agent may set a binding reserve price to be accepted for CO<sub>2</sub> allowances in such auction. The reserve price will be disclosed to prospective bidders prior to the auction.
- (7) Any CO<sub>2</sub> allowances left unsold in any auction may be made available for sale in a subsequent auction or auctions, in quantities and in a manner determined by the Department or its agent.
- (8) In conducting CO<sub>2</sub> allowance auctions, the Department or its agent may employ any of the following auction formats, or an auction format consisting of any or all of the components thereof:
  - (a) Uniform-price sealed-bid; or
  - (b) Ascending price, multiple-round.
- (9) Notice of Auctions
  - (a) A notice of CO<sub>2</sub> allowance auction (“notice”) will be published on the CO<sub>2</sub> Allowance Auction Website or the Department website at least 45 days prior to the date upon which each auction may be conducted. Such notices may be transmitted electronically to parties requesting such notification.
  - (b) Each notice will provide a specific description of the auction format for each auction, including all auction participation requirements, and will include but not be limited to the following information:
    - (i) date and time of the auction;
    - (ii) location and/or electronic address of auction;
    - (iii) number and vintage of CO<sub>2</sub> allowances to be auctioned;
    - (iv) bid format;
    - (v) pre-qualification instructions and application;
    - (vi) the terms and conditions that will govern auction transactions;
    - (vii) other pertinent rules of the auction; and
    - (viii) identification of a Department Contact Person.

### **C. Participation Eligibility and Requirements**

- (1) The auction or auctions will be open to participation by all individuals or entities that meet the financial requirements of this subsection.
- (2) Any party wishing to participate in a CO<sub>2</sub> Allowance Auction shall first:
  - (a) open and maintain a compliance or general account in Maine or other participating state pursuant to the provisions in 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program or comparable regulations in a participating state;
  - (b) submit a completed application in the format and manner provided in the notice to the Department or its agent on or before the application deadline date specified in the notice of CO<sub>2</sub> allowance auction; and

- (i) Application information and forms will be made available electronically on the CO<sub>2</sub> allowance auction website or the Department website. As part of the application, bidders shall provide information and documentation, as specified in the application, relating to bidder's ability and authority to execute bids and honor contractual obligations. Information and documentation sought in the application may include but may not be limited to:
  - (A) information and documentation regarding the corporate identity, ownership, and capital structure of the bidder;
  - (B) declaration of any beneficial interest of any allowance that may be acquired through the auction;
  - (C) the identification of any indictment or felony conviction of the bidder, or any member, director, principle, partner or officer of the bidder or any affiliate or related entity; or
  - (D) the identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation or law associated with any commodity market or exchange.
- (ii) Failure to provide any information required by the application may result in its being returned as incomplete. Prospective bidders whose applications have been determined to be incomplete will be given a reasonable opportunity, and in no event less than 10 business days, to provide additional information and to cure such deficiencies.
- (iii) Prospective bidders that qualify for participation under this subsection will be qualified for all subsequent CO<sub>2</sub> allowance auctions, and may bid in such auctions provided that such party has complied with the financial security requirements of this subsection. The Department or its agent may require applicants previously found qualified to update and re-file applications on an annual basis.
- (iv) Prior to each CO<sub>2</sub> allowance auction a prospective bidder that has qualified under this subsection must notify the Department or its agent of its intent to participate in the upcoming auction. This notification shall include either a signed statement that there has been no change to the information provided in the application, or a revised application if changes have occurred.
- (v) The Department or its agent may suspend or revoke its approval of an application if the bidder fails to comply with this Chapter and/or the provisions of 06-096 CMR Chapter 156, CO<sub>2</sub> Budget Trading Program. A decision under this subsection is final agency action.
- (c) provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Department or its agent.
  - (i) Bids in any auction may be limited to the level of financial security provided by the bidder.

- (ii) Financial security may be forfeited to and retained by the Department or its agent in the event the bidder's offer is accepted in a CO<sub>2</sub> allowance auction and the bidder fails to tender payment of the full amount when due.
- (iii) Bidders may request return of their financial security at any time prior to or following any CO<sub>2</sub> allowance auction, and the Department or its agent shall return said financial security provided that the Department or its agent has no current or pending claim to such security as a result of a failure of the bidder to comply with these regulations or to pay the full amount of its accepted bid when due.
- (d) If the Department or its agent determines that a bidder has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with any material provision of this Chapter, the bidder may be prohibited from participating in any future CO<sub>2</sub> allowance auctions. A decision under this subsection is final agency action.
- (e) Any applicant or bidder that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be precluded from participation in CO<sub>2</sub> allowance auctions. A decision under this subsection is final agency action.

#### **D. Auction Bids and Transfer of Allowances**

- (1) All bids shall be in a form prescribed by the Department or its agent, which shall be made available electronically on the CO<sub>2</sub> Allowance Auction Website, as appropriate. All bids submitted will be considered binding offers for the purchase of allowances under the rules of the auction.
- (2) No bidder or combination of bidders that have related beneficial interests may bid on more than 25% of the allowances available for sale in any given auction.
- (3) Upon receipt and approval by the Department or its agent of the information provided for under subsection 8(A) of 06-096 CMR Chapter 156 and upon payment in full by the successful bidder to the Department or its agent, the Department or its agent shall transfer or have transferred the corresponding CO<sub>2</sub> allowances to the successful bidder's compliance or general account in accordance with 06-096 CMR Chapter 156, subsections 8(B) and (C).
- (4) Within 10 days of the transfer of CO<sub>2</sub> allowances, the Department or its agent shall publish the auction clearing price and the total number of allowances sold in such auction on the CO<sub>2</sub> Allowance Auction Website.